which we need not be as concerned or need not be concerned at all with the application of the insulation criteria. In this regard, should equity interests be attributable in a manner similar to the benchmarks applicable to general voting stock interests -- for example, equity interests below a certain percentage of the total equity would be nonattributable, and those above a certain percentage creating a presumption of attribution -- subject to a noninvolvement certification? Should equity share be defined by the amount of cash contribution, the share of proceeds, or rights on dissolution? If the first, how do we evaluate contributions in the form of services? If the power of a limited partner is not related to his proportional partnership share (which is the premise of the current rules), is there a partnership size that would obviate the power of any one partner, such that ownership should not be attributed to any partner regardless of his/her share? We also ask whether other state and federal regulations might provide guidance in this area, and/or the extent that such regulations might provide sufficient protections so as to make additional Commission regulations redundant. In this regard, we request estimates, supported by economic or other studies that provide their basis, of how much additional capital might be made more readily or cheaply available to the broadcast industry by adoption of any of these approaches, as well as how such capital is likely to be distributed

VII. Limited Liability Companies and Other New Business Forms

64. In this proceeding we also seek comment as to how we should treat, for attribution purposes, the equity interest of a member in a limited liability company or LLC, a relatively new form of business association permitted and regulated by statute in at least 45 states.[119] LLCs are, in general, unincorporated associations that possess attributes both of corporations and partnerships. We have recently received TV and radio assignment applications where parties have argued that we should exempt certain owners of an LLC from attribution either because they should be treated as nonvoting shareholders or because they should be treated as fully-insulated limited partners. So that we do not indefinitely delay processing of pending applications, we plan to process them on a case-by-case basis until this rule making is completed, using the tentative proposal delineated in paragraph 69 infra as our interim policy, including the special exception for minorities discussed therein.

65. These requests raise important questions as to the application of our attribution rules, and we invite comment as to how we should treat LLCs, and other new business

[119] For a discussion of LLCs, see Brian L. Schorr, "Limited Liability Companies Considerations in Choosing a Business Entity," Forming and Using Limited Liability Companies and Limited Liability Partnerships 1994, 836 Practicing Law Institute/Corp. 171 (1994); Marybeth Bosko, "The Best of Both Worlds: The Limited Liability Company," 54 Ohio St. L.J. 175 (1993); Robert R. Keatinge, et al., "The Limited Liability Company: A Study of the Emerging Entity," 47 Bus. Law. 375 (1992); Nicholas G. Karambelas, "Shaping the Limited Liability Company, The District of Columbia Limited Liability Company Act of 1994," The Washington Lawyer, Nov.-Dec. 1994 at 38.

forms, such as Registered Limited Liability Partnerships ("RLLPs"),[120] as well as any other new business forms, that may arise in the future for attribution purposes. Any approach we take with respect to LLCs and similar hybrid entities must ensure that exemption from attribution is granted only where there are sufficient assurances that the exempted owner is adequately insulated from control of the entity. In addressing the attribution of LLCs, we hope to delineate the principles to be applied and express them in general terms that we can apply to new business forms that appear in the future. We invite comment as to the form and content of any general principles that may be distilled from our analysis of attribution for LLCs.

66. The specific attributes of LLCs may vary, since their form is regulated by state statutes,[121] and there is, as yet, no uniform state LLC statute. LLCs are, however, generally intended to afford limited liability[122] to members, similar to that afforded by the corporate structure, while also affording the management flexibility and flow-through tax advantages of a partnership, without many of the organizational restrictions placed on corporations or limited partnerships.[123]

67. Of greatest significance with respect to our attribution rules is the fact that, depending on the requirements of the applicable state statute, LLCs generally afford their members broad flexibility in organizing the management structure and permit members to

[120] Some states have enacted statutes permitting partnerships to elect to become RLLPs. RLLPs afford the benefits of a partnership, while permitting a mid-level of liability protection, unlike LLCs, which provide full limited liability protection. RLLP statutes generally require each partner to bear the consequences of his own negligent or wrongful acts, while insulating the partner from individual liability for the negligent or wrongful acts of other partners or partnership representatives not under the protected partner's supervision or control, unless the protected partner was directly involved in the act, or had notice and failed to take reasonable steps to prevent or cure the act. For a discussion of RLLPs, see Schorr, supra note 119.

[121] LLCs are formed by filing articles of organization with the state. See Bosko, supra note 119, at 184-85.

[122] Limited liability means that the owners of a business entity are not personally liable for the debts of the business. See Larry E. Ribstein, Business Associations § 1.02[C][3] (1990).

[123] Unlike a limited partnership, which must have at least one general partner who has unlimited liability, all the members of an LLC may have limited liability. Additionally, a limited partner may lose limited liability protection if he participates actively in the management of the partnership. By contrast, members of an LLC may maintain limited liability while actively participating in the management of the LLC. See Bosko, supra note 119, at 193-95; Schorr, supra note 119.

actively participate in the management of the entity without losing limited liability. Thus, with some variation depending on the applicable statute, LLCs may be organized with centralized management authority residing in one or a few members, or delegated to a nonmember, or, alternatively, all members may share management authority.[124]

68. Since the LLC is a relatively new business form, we have not had the occasion before the recently filed applications to rule on the issue of how we should treat LLCs under our attribution rules, i.e., to what degree and under what circumstances we should treat participation as a member of an LLC as a cognizable interest subject to the multiple ownership limits. We have also not had the occasion to rule on RLLPs. Accordingly, we invite comment as to what attribution criteria we should apply to LLCs and RLLPs. We also invite comment as to the advantages of LLCs, in general, and also, in particular, the impact on minority and female ownership opportunities.

69. We tentatively propose to treat LLCs and RLLPs as we now treat limited partnerships. Membership in an LLC or RLLP would be treated as a cognizable interest for multiple ownership purposes unless the applicant certifies that the member is not materially involved, directly or indirectly, in the management or operation of the media-related activities of the LLC or RLLP. We propose that such certification should be based on the criteria specified in our Attribution Reconsideration and Attribution Further Reconsideration.[125] We note, however, that applying limited partnership attribution criteria to LLCs would result in attributing all investors that may provide programming or other services to the LLC. In this regard, our recent experience suggests that such arrangements have been central to proposals that might significantly advance minority ownership of broadcast facilities. Accordingly, we seek comment on whether we should provide an exception to our tentative proposal on a case by case basis, where doing so would advance our policy of enhancing opportunities for broadcast station ownership by minorities.

70. With respect to our tentative proposal to treat LLCs as we now treat limited partnerships, we invite comment on whether the insulating criteria developed with respect to limited partnerships are sufficient to insulate members of LLCs and RLLPs or whether other criteria would be more effective. We propose to adapt the criteria to conform to the specific LLC or RLLP organizational forms without changing any underlying substantive requirements, and we invite comment as to how we should do so.

71. We are not inclined to treat LLCs as we currently treat corporations, exempting from attribution the interests of "nonvoting" shareholders without regard to the presence or absence of insulating provisions in an operating agreement.[126] This interim view reflects both our relative lack of experience with this new business form and also our concern that there are no requirements intrinsic to this business form to require members to be uninvolved in the management of the business, absent insulation provisions agreed to by them. If, however, commenters raise significant policy reasons why we should alter this interim view, we will consider those reasons. We also invite comment as to what approaches we should take to LLCs and RLLPs should we neither adopt the equity benchmark for partnerships nor retain the existing attribution standards. We also request comment on whether there are differences between LLCs and/or RLLPs and limited partnerships such that we should not treat the former entities as we treat limited partnerships.

72. We invite comment on whether, if we adopt the certification approach with respect to LLCs, we should also require parties to file copies of the organizational filings and/or operating agreements with the Commission when an application is filed. If so, what if any, confidentiality concerns exist, and how should they be addressed? Our justification for any such possible filing requirement is that there is no uniform LLC statute, and the organizational variation among such entities may be broad. Alternatively, we could retain the discretion to require such a filing on a case-by-case basis, where we find it warranted.

73. If we adopt, as our attribution standard, an ownership benchmark applicable to limited partnerships, as discussed above, we invite comment on whether it would be appropriate to apply that benchmark to LLCs and RLLPs as well.

74. We seek comment on the following questions based on our proposed treatment of LLCs and RLLPs and we invite commenters to suggest alternative proposals. If we relax insulation standards for widely-held limited partnerships, as proposed in the Capital Formation Notice and discussed above, should we apply these changes to LLCs and RLLPs? We invite comment as to whether we should take a uniform approach to widely-held LLCs, RLLPs, and "business development companies." Do these entities have similarities in organization and/or function that would mandate such similar treatment or are there significant distinctions? Alternatively, do the policy goals discussed in the Capital Formation Notice apply with respect to LLCs and RLLPs so as to justify such a similar approach? If a uniform approach is warranted, what should that approach be?

[124] The LLC statutes of various states may have differing requirements for management of the LLC. Most LLC statutes provide for decentralized management (management by members) as a default provision but allow management by managers if provided for in the articles of organization or operating agreement. See Ribstein & Keatinge on Limited Liability Companies § 8.02 (1993). Since LLCs have the corporate attribute of limited liability, in order to avoid two-tiered corporate tax treatment, LLCs must avoid at least two of the other three characteristics that distinguish corporations and partnerships for tax purposes--continuity of life, centralized management, and free transferability of ownership interests. See Keatinge, supra note 119 at 385.

[125] The insulation criteria required to be contained in the limited partnership agreement are discussed in note 110 supra.

[126] See 47 C.F.R. 73.3555, Note 2(f).

75. Should we treat all LLCs the same or differentiate those with centralized management from those with decentralized management? In LLCs where all management authority has been vested in nonmembers who are selected by the members, should the managers be treated, for attribution purposes, as equivalent to officers and/or directors of a corporation? Should we adopt an approach of exempting from attribution members with limited equity interests, regardless of lack of compliance with insulating criteria? For attribution purposes, should the percentage of "ownership" be determined by voting rights among the members, the share divisions designated by the parties, the extent of capital contribution, or by some other measure? Under our current attribution rules, we do not distinguish among partners based on the amount of equity they contribute or their share division. If the determination is made based on capital contribution, what should be done about members whose contribution is in services? How should we treat LLCs in multi-tiered vertical organizational chains? Should multipliers be applied, and, if so, under what circumstances?

VIII. The Cross-Interest Policy and Multiple Business Interrelationships

76. We also incorporate in this proceeding the pending issues raised in the Further Notice of Inquiry/Notice of Proposed Rule Making in MM Docket No. 87-154 ("Cross-Interest Notice")[127] with respect to existing aspects of the Commission's cross-interest policy. That policy prevents individuals from having "meaningful" interests in two broadcast stations or a daily newspaper and a broadcast station, or a television station and a cable television system, when both outlets serve "substantially the same area."[128] We also seek comment regarding the appropriate treatment of nonequity financial interests and multiple business interrelationships between licensees.

77. We review these relationships in light of the fundamental economic principle that the conduct and control of business organizations may at times be influenced by nonequity interests. In particular, debtholders may in particular circumstances be in a position to exert influence over day-to-day management of a firm, especially when coupled with other interests. In addition to reviewing the remaining aspects of our cross-interest policy, we review issues raised by such interests and other multiple business interrelationships, and inquire whether case-by-case oversight of these interests and the remaining cross-interest relationships is necessary.

A. The Cross-Interest Policy

78. **Background.** The cross-interest policy originally developed in the 1940s as a

[127] 4 FCC Rcd 2035 (1989).

[128] Notice of Inquiry in MM Docket No. 87-154, 2 FCC Rcd 3699 (1987) ("Cross-Interest Notice of Inquiry").

supplement to the "duopoly" rule, a multiple ownership rule which then prohibited the common ownership, operation, or control of two stations in the same broadcast service serving substantially the same area. At that time, either actual working control or ownership of 50 percent or more of the stock of a licensee was necessary to trigger the "ownership, operation or control" requirement of the duopoly rule. Thus, the original local ownership restrictions did not encompass minority stock ownership, positional interests (such as officers and directors), and limited partnership interests. The cross-interest policy was developed to address the competitiveness and diversity concerns created when a single entity held these types of otherwise permissible interests in two (or more) competing outlets in the same market.

79. The cross-interest policy evolved almost entirely through case-by-case adjudication, and through this process the following came to be viewed as constituting "meaningful" interests subject to the policy: key employees, joint ventures, nonattributable equity interests, consulting positions, time brokerage arrangements, and advertising agency representative relationships.[129] The cross-interest policy did not prohibit these interests outright, but required an ad hoc determination regarding the nonattributable interests at issue in each case.

80. In 1987, the Commission initiated a comprehensive review to assess the continuing need for the cross-interest policy in light of the increasingly competitive environment facing the broadcast industry and the 1984 revisions to the Commission's attribution rules.[130] Based on this review, the Commission issued a Policy Statement limiting the scope of the cross-interest policy so that it would no longer apply to consulting positions, time brokerage arrangements and advertising agency representative relationships.[131] This decision was based on a number of factors. First, changes in our ownership and attribution rules had to a large extent superseded cross-interest regulation with respect to the relationships that most significantly affected competition and diversity. Second, the record suggested that the cross-interest policy may be impeding the ability of broadcasters to compete in today's multimedia market by possibly limiting their ability to adopt more efficient forms of organization. Third, there had been enormous growth in the number and variety of media outlets since the cross-interest policy was first established. Consequently, the media marketplace had become significantly more competitive and diverse, diminishing the need for continued cross-interest regulation to achieve these objectives. Fourth, there were numerous alternative safeguards, such as federal and state antitrust laws, fiduciary duties and private contract rights, which addressed the same competition and diversity concerns that formed the basis for the cross-interest policy. In light of these factors, the

[129] See Cross-Interest Notice of Inquiry, 2 FCC Rcd at 3699-3700.

[130] Id.

[131] Policy Statement in MM Docket No. 87-154, 4 FCC Rcd 2208 (1989) ("Cross-Interest Policy Statement").

Commission determined that the burden and uncertainty created by continued cross-interest regulation of consulting positions, brokerage arrangements, and advertising agency representative relationships could no longer be justified.

81. Current Aspects of the Cross-Interest Policy. Although we indicated that the foregoing factors justified elimination of certain aspects of the cross-interest policy, we issued the Cross-Interest Notice to seek further comment concerning key employees, nonattributable equity interests, and joint ventures. We solicited comment on whether retention of the remaining cross-interest policies was necessary to prevent anticompetitive practices, whether alternative deterrent mechanisms exist to assure competition and diversity, and whether continued regulation of relationships not specifically addressed by the Commission's attribution rules is necessary. We also questioned whether regulatory oversight of one or more of these interests should be limited to geographic markets with relatively few media outlets. As described below, only five comments and reply comments were filed in response to the Cross-Interest Notice.[132]

82. Key employee relationships. The cross-interest policy has generally prohibited an individual who serves as a key employee, such as general manager, program director, or sales manager, of one station from having an attributable ownership interest in or serving as a key employee of another station in the same community or market.[133] The application of the cross-interest policy in these situations is premised on the potential impairment to competition and diversity and the apparent conflict of interest arising from the ability of key employees to implement policies to protect their substantial equity interest in the other station. The majority of commenters urged the Commission to eliminate the cross-interest policy relating to key employees.[134] They contended that key employees, particularly in smaller corporations, are frequently also officers, directors, or cognizable shareholders and, therefore, are regulated by the current attribution rules. Moreover, to the extent that key employees are not restricted by the attribution rules, these commenters asserted that they are obligated to act in the best interests of their employer and to avoid potential conflicts of interest.[135] According to these commenters, internal conflict of interest policies and common

[132] See Comments of CBS, Inc. ("CBS"), National Association of Broadcasters ("NAB") and Home Shopping Network, Inc. ("HSN"); Reply Comments of Consumer Federation of America and Telecommunications Research and Action Center ("CFA/TRAC"), Capital Cities/ABC, Inc. ("Capital Cities/ABC"). We will incorporate into the record of this proceeding the comments and reply comments filed in response to the Cross-Interest Notice along with the comments and replies filed in response to the Cross-Interest Notice of Inquiry.

[133] See Cross-Interest Notice, 4 FCC Rcd at 2035.

[134] See Comments of CBS and NAB; Reply Comments of Capital Cities/ABC.

[135] See Comments of CBS at 18.

law fiduciary duty and contract remedies ensure this.[136] Commenters also maintained that licensees have an incentive to police potential employee conflicts of interest given the competitive marketplace in which they operate.[137] CFA/TRAC and London Bridge Broadcasting, Inc., on the other hand, urged the Commission to retain the cross-interest policy as it applies to key employees, contending that the influence of key employees on station operations is akin to that of station owners, and therefore they should be treated similarly for purposes of attribution. These parties also questioned the efficacy of the conflict of interest policies and other remedies in deterring abuse.

83. Nonattributable equity interests. The relationship proscribed by the cross-interest policy typically involves an individual who has an attributable interest in one media outlet and a substantial nonattributable equity interest in another media outlet in the same market.[138] The Commission's concern with these relationships has been that the individual could use the attributable interest in one media outlet to protect the financial stake in the other media outlet, thus impairing arm's length competition. (Two or more separate non-attributable interests in a market are not proscribed by this policy, as neither gives rise to the potential to influence station operations that would concern us.) The majority of commenters addressing this issue urged the Commission to eliminate application of the cross-interest policy to nonattributable equity interests.[139] These parties questioned the continued need for cross-interest review in light of the amended attribution provisions of the multiple ownership rules.[140] According to these commenters, any residual concerns not covered by the Commission's ownership rules can be deterred by the competitive marketplace as well as remedies provided by private contracts, federal and state antitrust laws, and fiduciary duties. These parties further maintained that the ad hoc nature of the cross-interest policy imposes administrative burdens and creates uncertainty, impeding the ability of broadcasters to raise capital. In contrast CFA/TRAC urged the Commission to retain the cross-interest policy as it applies to

[136] See Comments of CBS at 18-19; NAB at 5. CBS attached to its comments a copy of its conflict of interest policy.

[137] See Comments of CBS at 19.

[138] Such nonattributable interests might include nonvoting stock, insulated limited partnership interests and minority stock interests in corporations having a single majority stockholder. The Cross-Interest Notice expressly excluded from the scope of this proceeding equity interests that are nonattributable because they are below the 5 percent attribution benchmark and thus are not sufficiently substantial to induce anticompetitive conduct. 4 FCC Rcd at 2040 n.12.

[139] See, e.g., Comments of CBS, NAB, HSN. See also Comments of Morgan Stanley and Cox (submitted in response to the Cross-Interest Notice of Inquiry).

[140] See Comments of CBS at 15-17; NAB at 5-7; HSN at 3-6; Cox at 8-13; and Morgan Stanley at 17-19.

nonattributable equity interests arguing that this policy continues to serve an important role and that the uncertainty produced by ad hoc application of the policy is not as great as other commenters indicate

84 Joint venture arrangements The cross-interest policy has prevented two local broadcast licensees from entering into joint associations to buy or build a new broadcast station, cable television system, or daily newspaper, in the same market.[141] These joint ventures have triggered cross-interest scrutiny because the successful operation of the joint venture was thought to require a cooperative relationship between otherwise competing stations, and this would impair competition in the local market. Most of the commenters responding to the Cross-Interest Notice urged the Commission to eliminate cross-interest review of joint ventures. In support of this position, the commenters argued that cross-interest regulation of joint ventures has been largely displaced by the current attribution rules They maintained that where the interests involved are not attributable, such interests lack the requisite potential for influence to warrant regulatory scrutiny These parties also asserted that the marketplace is sufficiently competitive to deter abuse in this area, and that the antitrust laws provide an additional safeguard. Again, CFA/TRAC took issue. It argued that continued regulation of joint ventures pursuant to the cross-interest policy is necessary, especially given the Commission's relaxation of the multiple ownership rules. CFA/TRAC questioned whether joint venturers will compete vigorously at all times, and argued that "advertising and promotion practices, sales territories and audience selection -- not to mention cross-interest -- can complement the interests of joint venturers."[142]

85 Discussion. The commenters supporting the elimination of the remaining aspects of the cross-interest policy put forth four general arguments: (1) The cross-interests that implicate diversity and competition concerns are now covered by our multiple ownership rules; (2) The video entertainment marketplace has become increasingly competitive, thus diminishing the need for regulatory oversight of cross-interests; (3) Alternative remedies, such as the antitrust laws and internal conflict of interest policies, will serve to deter abuses stemming from cross-interests; and (4) The cross-interest policy imposes significant burdens in terms of administrative costs and uncertainty, chilling investment in the broadcast industry. We believe each of these arguments has merit, and continue to question the continuing need for our cross-interest policy in its present form. To the extent aspects of the policy no longer serve the public interest, they should be eliminated; we also strive to clarify aspects of the policy that may warrant continued enforcement.

[141] Certain joint venture interests are now covered under our attribution rules. For example, our ownership rules would now cover the case in which the cross-interest policy was first applied to joint ventures, Macon Television Co., 8 RR 703, 704-5 (1952). In that case, we prohibited a joint venture involving two radio stations in the same market from acquiring a license for a television station in that market Today, each radio station's 50 percent interest in the television station would trigger the Commission's rule governing the common ownership of a commercial radio station and a commercial television station in the same market. See 47 C.F.R. § 73.3555(c) The ownership and attribution rules, however have not completely supplanted the cross-interest policy as it applies to joint ventures For example, our local ownership rules do not preclude radio stations that operate in the same market from engaging in a joint venture to build or buy another radio station in that market up to certain ownership levels. See id. at § 73.3555(a)(1); Cross-Interest Notice, 4 FCC Rcd at 2037.

[142] Reply Comments of CFA/TRAC at 15

86. For a number of reasons, however, we believe we need to develop a more complete and updated record in our review of the cross-interest policy as applied to key employees, joint ventures, and nonattributable equity interests. First, it is appropriate to afford parties the opportunity for further comment concerning the issues raised in the Cross-Interest Notice in light of the review of the attribution rules now underway. Second, after soliciting comments in the Cross-Interest Proceeding, we subsequently relaxed our radio ownership rules in a number of respects, and today propose to relax our television ownership rules. There is an important interplay between the cross-interest policy and our ownership and attribution rules, given that both seek to address the same competition and diversity concerns. It is consequently necessary as a general matter to update the record to ensure that changes in these interrelated policies are coordinated. Moreover, as set forth below, we also seek comment regarding whether multiple cross interests and business relationships between stations, when viewed in combination, raise diversity and competition concerns, an issue that the commenters did not address.

87. On a more specific level, we also seek comment regarding a number of issues either not addressed in the comments or raised by the comments themselves. As set forth below, these issues involve the four principal arguments for modifying the cross-interest policy as well as the possible means of narrowing the policy to the extent we determine that certain aspects should continue to be enforced.

88. As noted above, a number of parties argued that our ownership and attribution rules have supplanted the remaining aspects of our cross-interest policy that implicate diversity and competition concerns. It is true that our attribution rules have evolved to the point where they now apply to a number of interests formerly covered only by the cross-interest policy. We seek comment, however, on whether this argument is undermined by the proposed changes to our attribution rules. For example, would there be a heightened need for the cross-interest policy as it applies to nonattributable equity interests if we raise our attribution benchmark for voting stock from 5 percent to 10 percent? Similarly, will relaxation of our radio and television ownership rules require us to take a more cautious approach in modifying our cross-interest policy? To be sure, a number of parties argued that our ownership and attribution rules reflect the Commission's expert judgment regarding what confers sufficient influence and control over station operations to require regulatory

intervention.[143] But while this generally will be the case, there remains the question of whether particular situations warrant case-by-case review to determine whether a cross-interest poses diversity and competition concerns. For example, while a nonvoting stock interest may not generally raise the likelihood of influence over a station's operations and therefore is not attributable, does such an interest require continued oversight under the cross-interest policy when it is a sizable investment or the majority equity interest in the licensee, or when the holder already has attributable interests in the maximum number of stations in the market? We seek comment with respect to these issues, and request commenters to be specific in defining the particular situations and harms they may believe require continued application of the cross-interest policy.

89. We also seek further comment on the argument that the increased competition facing broadcasters eliminates the need for the cross-interest policy. We certainly agree as a general matter that broadcasters are facing increased competition; indeed, since we initiated our cross-interest inquiry the video entertainment marketplace has become even more competitive, with this trend expected to continue as the communications industry undergoes further changes with the emergence of new technologies. But we seek comment on whether there are smaller markets with an insufficient number of media outlets to assume that competition will deter the abuses our cross-interest policy seeks to prevent. If parties believe this to be the case, we ask them to define the size and nature of the markets that raise such concerns.

90. Commenters favoring the elimination of the remaining aspects of the cross-interest policy point to the burdens and uncertainty it creates. Given the nature of case-by-case review, enforcement of the policy does impose administrative burdens, both on the Commission and on applicants, and can lead to results that are difficult to predict in advance. We ask parties, however, to submit, if possible, evidence to support the assertion that the cross-interest policy has impeded the ability of broadcasters to raise capital. We also seek comment regarding the extent, if any, of a shortage of key employees, especially in smaller markets, that may be exacerbated by our cross-interest policy.

91. In addition, CFA/TRAC raised several questions regarding the alternative remedies that other parties maintain lessen the need for the remaining aspects of our cross-interest policy. How common, and how effective, are the internal conflict of interest policies cited by CBS and other parties as providing a means to deter abuses stemming from key employee cross-interests? While the antitrust laws deter anticompetitive conduct, do they address the diversity concerns behind the cross-interest policy? We seek comment as to these questions and more generally as to the effectiveness of these alternative remedies.

92. Finally, we received no comment on ways to clarify and possibly narrow the cross-interest policy in the event we determine that continued enforcement is appropriate. While most parties did not address this issue because they supported complete elimination of the policy, even commenters who supported continued enforcement offered no guidance other than to state generally that there is "ample room for streamlining."[144] We consequently seek specific suggestions as to how we might clarify the cross-interest policy. We also seek comment on the following means of narrowing the policy: (1) Should we limit the application of the cross-interest policy to smaller markets where competition and diversity are of particular concern, and, if so, how should we define these markets? (2) Should we enforce the cross-interest policy only where the cross-interest, if attributable under our attribution rules, would violate the ownership rules?[145] (3) With respect to nonattributable equity interests, should we limit review only to those interests reaching a certain level of ownership, or when those interests exceed or reach a certain percentage of the licensee's voting equity?

B. Non-Equity Financial Relationships and Multiple Business Interrelationships

93. In our review of the cross-interest policy, we have focused on each cross-interest individually. But broadcasters in particular markets may also at times enter into a number of different business relationships between themselves. Such interrelationships may be spurred by a number of factors, including the increasing sophistication of the financial markets and the incentive for broadcasters to enter into cooperative arrangements to meet the challenges of the evolving communications industry. While we recognize the important role cooperative arrangements can play, we seek comment as to whether multiple "cross-interests" or otherwise nonattributable interests, when viewed in combination, raise diversity and competition concerns warranting regulatory oversight.

94. The nature of broadcaster interrelationships can vary widely. They can take the form of a combination of nonattributable interests, such as debt and nonvoting equity. Or shareholders with otherwise nonattributable interests can combine those interests via voting agreements or other contractual relationships or business relationships. Such interrelationships may also involve family relationships in conjunction with other interests. Many of these business interrelationships serve legitimate purposes and, indeed, have been encouraged by the Commission. For instance, in its review of the radio ownership rules, the Commission determined that it would continue to allow separately owned radio stations to function cooperatively in terms of advertising sales, technical facilities, formats and other aspects of station operation as long as each licensee retains control of its station and complies

[143] See Comments of CBS at 15-17; HSN at 3-6.

[144] Comments of CFA/TRAC at 1. See also Comments of Amherst Broadcasting (submitted in response to the Cross-Interest Notice of Inquiry).

[145] Under this proposal, for example, scrutiny of a nonattributable cross-interest would only be triggered if the holder of the interest already had attributable interests in the maximum number of broadcast stations.

with the Communications Act, the Commission's rules and policies and the antitrust laws.[146] In addition to permitting such joint arrangements,[147] the Commission also continued to allow time brokerage agreements, also referred to as local marketing agreements ("LMAs"), between radio stations, although it imposed certain restrictions on such agreements if the stations involved operated in the same local market.[148] Television broadcasters are also permitted to enter into LMAs, although we have solicited comment as part of our review of the television ownership rules as to whether we should regulate these arrangements as we have in our radio rules.[149] Television broadcasters also are no longer prohibited by our rules from engaging in combination advertising and joint sales practices.[150]

[146] Report and Order in MM Docket No. 91-140, 7 FCC Rcd 2755, 2787 (1992) ("Radio Ownership Order"), recon. granted in part, 7 FCC Rcd 6387 (1992) ("Radio Ownership Reconsideration Order"), further reconsidered, FCC 94-267 (adopted Oct. 20, 1994; released Nov. 8, 1994) ____ FCC Rcd ____ (1994).

[147] As the Commission has made clear, the joint arrangements in this context involve cooperative sales, advertising and other such arrangements between broadcasters, and should be distinguished from the joint ventures that are subject to the cross-interest policy; the latter involves broadcast stations operating in the same service in the same market that seek to construct or purchase a broadcast station in another service in that market. Notice of Proposed Rule Making in MM Docket No. 91-140, 6 FCC Rcd 3275, 3281 n.41 (1991).

[148] In particular, the Commission concluded that where an individual or entity owns or has an attributable interest in one or more stations in a market and time brokers any other station in that market for more than 15 percent of the brokered station's broadcast hours per week, the brokered station will be counted toward the brokering licensee's permissible ownership totals under the local and national ownership rules. Licensees are also prohibited from duplicating more than 25 percent of their owned station's programming through brokered stations (or otherwise) where both stations are in the same service and serve substantially the same area. We also imposed certain public file and reporting requirements on licensees engaged in time brokerage arrangements. Radio Ownership Order, 7 FCC Rcd at 2788-89; Radio Ownership Reconsideration Order, 7 FCC Rcd at 30-36.

[149] See Notice of Proposed Rule Making in MM Docket No. 91-221, 7 FCC Rcd 4111, 4115-16 (1992). In another Notice adopted today, in MM Docket Nos. 94-149 and 91-140, we seek comment about the impact, if any, of LMAs on ownership by minorities and women of broadcast facilities.

[150] See Second Report and Order in MM Docket No. 83-842, 59 RR 2d 1500, 1511-18 (1986), on recon., 2 FCC Rcd 3474 (1987). Under our network representation rule, however, we continue to prohibit television stations, other than those "owned and operated" by a television network, from being represented by their network in the spot sales market. Report and Order in BC Docket No. 78-309, 5 FCC Rcd 7280 (1990).

95. We do not intend to reopen our decisions in our radio ownership proceeding concerning radio joint arrangements or time brokerage arrangements. Nor do we wish to reopen our previous decision regarding joint sales practices in the television industry, or to incorporate here the issues we have raised in our pending television ownership proceeding concerning television time brokerage agreements. We do, however, seek comment as to whether ostensibly separately owned stations could so merge their operations, through a variety of joint enterprises or cooperative agreements, perhaps in conjunction with other nonattributable interests, and thereby create such close business interrelationships as to implicate our diversity and competition concerns.

96. For instance, there may be circumstances where a substantial debtholding should trigger a cross-interest analysis when it is accompanied by a number of other close business interconnections. As stated at the outset, in devising our attribution rules we seek to identify those interests that convey to their holders a realistic potential to influence the operations of the licensee in core areas such as programming and competitive practices, while balancing our concern to avoid unnecessary and costly regulatory intervention by minimizing the attribution of noninfluential interests.[151] Our theoretical analysis recognizes that holders of non-equity interests can have influence on a licensee in ways that may be of concern. Along those lines, we recognize that debt and other contractual relationships can have the associated potential to exert influence on core operational decisions of the licensee. There is evidence suggesting that the distinction between debt and equity based on voting rights is no longer clear,[152] and we recognize that debtholders have, for some time, required borrowers to meet certain financial conditions or face the prospect of forced bankruptcy. While corporations have no obligation to give debtholders voting rights, except in bankruptcy, it is not unusual for a corporation's bankers to have representation on the firm's board of directors. (In such cases, of course, attribution attaches to the directorship.)

97. In 1984, we decided to exclude debt from attribution on the supposition that attributing debt would severely restrict capital sources for broadcasters, and because debt financing was the least likely of all financing sources to involve an interest that implicates the multiple ownership rules.[153] We believe, at this point, that we should continue to exclude such relationships, standing alone, from attribution under the multiple ownership rules because any other approach would, we believe, severely impair the ability of the broadcasting industry to obtain necessary capital. We would neither wish to inhibit such a key means of obtaining capital nor to disrupt existing expectations and relationships to such a degree. If any commenters disagree with this conclusion, we invite them to demonstrate to us that the benefits of extending our attribution rules to debt and other similar contractual relationships

[151] See supra, ¶¶ 12-16.

[152] See "Are the Distinctions between Debt and Equity Disappearing?," (R. W. Kopcke and E. Rosengren eds.) Federal Reserve Bank of Boston, Conference Series #33 (1989).

[153] Attribution Order, 97 FCC 2d at 1022.

outweigh the significant drawbacks we have delineated.

98. While we do not intend to reconsider our 1984 decision not to recognize debtholdings per se as attributable interests, there may be circumstances where debtholding, accompanied by a number of other close business interconnections, should be considered to be attributable. The debtholder, for example, a licensee of another station in the same market, may have also entered into a joint sales or other cooperative arrangement with the debtor station. The identity of the debtholder may be of particular significance: debt financing by institutional lenders may not be as significant to our concerns as debt financing by a multi-station owner, or by the seller of a station, or by the owner of another station in the same market. With respect to institutional lenders, it has been our belief that the nature of such institutions ensures that any risk of attempts to influence or control the licensee debtor will be remote and minimal, and it is therefore unnecessary to consider such interests as cognizable. Moreover, we understand that debt financing by banks is a critical, widely-used, source of financing, that institutional lenders are limited in number, and that it would therefore harm the industry and the public if such debt were found cognizable for purposes of our multiple ownership rules. Another important factor would be the amount of the debt and whether the terms of the credit agreement provide the debtholder leverage over the day-to-day operations of the licensee.

99. We seek comment regarding the potential for debt or other nonattributable interests, in conjunction with a series of cooperative or contractual arrangements, to provide their holders the ability to influence the day-to-day operations of a licensee, thus implicating our competition and diversity concerns. More generally, we seek comment regarding the possibility that our ownership and attribution rules may be underinclusive in certain cases, failing to capture particular concentrations or conglomerations of ownership or influence that undermine diversity and competition. A combination of otherwise nonattributable interests and business relationships, while not raising any concern when viewed in isolation, could possibly add up to create sufficient influence to warrant attribution. We seek comment as to the extent, if any, of such underinclusiveness in our rules, and whether there are certain types of combinations of business interrelationships, such as the debtholding relationship described above, that should be of particular concern.

100. Any regulation of such interrelationships, given their varying forms, would require case-by-case review in the context of applications for new stations or transfer or assignment applications. We seek comment as to whether the burdens and uncertainty created by such review would be outweighed by the perceived benefits of addressing the concerns in this area, and whether these concerns are best addressed in the context of our real-party-in-interest rules and de facto transfer of control challenges. We also seek comment as to whether any review of such close business interrelationships should be limited to those markets where the lack of competition and diversity is a particular concern, and how such markets should be defined. In addition, should we focus on combinations of business interrelationships among stations in the same market only, or do inter-market relationships among stations also warrant review? We wish to emphasize that in considering these issues we are sensitive to the need not to inhibit capital flow into the broadcast industry or unduly disrupt existing financial arrangements.

IX. CONCLUSION

101. By this Notice of Proposed Rule Making, we request comments on the many issues pertinent to our analysis of whether the current attribution rules continue to be effective in serving their goals or whether changes to the rules are required. Additionally, we request comment on how to treat Limited Liability Companies and Registered Limited Liability Partnerships for attribution purposes. The attribution rules are a critical enforcement mechanism for the Commission as it applies its multiple ownership rules. We expect that our review of these rules will be thorough and far-reaching, as discussed herein, and we ask commenters to give serious and thoughtful consideration, supported by empirical analysis and rigorous economic theories, to the important issues raised herein.

X. ADMINISTRATIVE MATTERS

102. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before April 17, 1995, and reply comments on or before May 17, 1995. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. 20554.

103. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission Rules. See generally 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

104. Additional Information. For additional information on this proceeding, contact Mania K. Baghdadi (202-632-7792), or Robert Kieschnick (202-632-6302), Mass Media Bureau.

105. Initial Regulatory Flexibility Analysis. See Appendix attached.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX

Initial Regulatory Flexibility Analysis

I. Reason for the Action: This proceeding was initiated to obtain comment on whether the Commission's broadcast attribution rules continue to be effective in serving their intended goals, and on whether they should be revised in certain areas to more effectively achieve those goals.

II. Objective of this Action: The actions proposed in the Notice are intended to assure that the Commission's broadcast attribution rules effectively implement the Commission's broadcast multiple ownership rules by identifying those interests that have the potential to influence the licensee in core operating areas, such as programming.

III. Legal Basis: Authority for the actions proposed in this Notice may be found in Sections 4,303, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 303, 310.

IV. Reporting, Recordkeeping and Other Compliance Requirements Inherent in the Proposed Rule: If the attribution rules are changed, the Commission would have to change the reporting requirements in the Commission's annual ownership report form, accordingly, as the attribution rules determine which broadcast interests must be reported to the Commission and are counted for multiple ownership purposes.

V. **Federal Rules Which Overlap, Duplicate or Conflict with the Proposed Rule.** None.

VI. Description, Potential Impact and Number of Small Entities Involved: Approximately 11,000 existing television and radio broadcasters of all sizes may be affected by the proposals contained in this decision. After evaluating the comments in this proceeding, the Commission will further examine the impact of any rule changes on small entities and set forth our findings in the Final Regulatory Flexibility Analysis.

VII. Any Significant Alternatives Minimizing the Impact on Small Entities and Consistent with the Stated Objectives: The Notice solicits comments on a variety of alternatives.

As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the IRFA, to the Chief

Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 et seq. (1981)).

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 94-339

In the Matter of	)	
	)	
Section 208 Complaints Alleging Violations of the Commission's Rate of Return Prescription for the 1989-1990 Monitoring Period	)	File Nos. E-93-104, et al.
	)	
	)	
	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: December 23, 1994; Released: December 23, 1994

By the Commission:

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	
AT&T Submarine Systems, Inc.	**File No. SCL-94-006**
Application for a License to Land and Operate a Digital Submarine Cable System Between St. Thomas and St. Croix in the U.S. Virgin Islands	

TLD'S SUPPLEMENTAL COMMENTS

I. INTRODUCTION

Telefónica Larga Distancia ("TLD") hereby submits Supplemental Comments on the above-captioned Application of AT&T Submarine Systems, Inc. ("AT&T-SSI"). Following the briefing of this matter, the Commission staff held a Status Conference and invited supplemental comments.[1/]

TLD offered two independent reasons for denying the Application in its Petition to Deny and Reply comments. **First**, TLD maintained that the AT&T-SSI Application to construct the St. Thomas-St. Croix cable system should be denied because the proposed cable system is an essential facility for landing international cable systems in the U.S. Virgin Islands for which there is no ready substitute.[2/] Under

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1/ See Letter of John W. Hunter to Susan O'Connell (Dec. 22, 1994).

2/ TLD Petition to Deny at 4-7; TLD's Reply at 2-4.

the NARUC I[3] standard applied by the Commission, this fact alone is enough to deny the AT&T-SSI Application. As AT&T-SSI conceded, "in each case in which the Commission approved a landing license for a private cable, adequate common carrier service already existed."[4] There is no disputed fact. The existing St. Thomas cable station is at capacity and there is *no other common carrier facility* in the U.S. Virgin Islands that can serve as a cable station to land, and interconnect with, international cables.[5] At the Status Conference, AT&T acknowledged that there is no other cable station that could be used for landing international cables in the U.S. Virgin Islands. This lack of alternative common carrier facilities, alone, is sufficient to deny AT&T-SSI's Application to land and operate the proposed St. Thomas-St. Croix cable system on a private carrier basis.

Second, TLD established that AT&T-SSI should not be permitted to operate the proposed cable system on a private basis because it could discriminate in favor of AT&T's affiliated common carriers and against competitive common carriers. AT&T-SSI has the unique power to discriminate in favor of its affiliated carriers because AT&T-SSI has a dominant position in the cable construction market, and because

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[3] National Association of Regulatory Utilities v. FCC, 525 F.2d 630, 632 (D.C. Cir.), cert. denied, 425 U.S. 999 (1976).

[4] AT&T-SSI Opp. at 7.

[5] While VITELCO is apparently contemplating construction of a new cable system, it has not filed any application with the FCC, and is reconsidering its position in light of the AT&T pending Application. More importantly, any cable system built by VITELCO would be designed for intra-Virgin Islands traffic, not for the international traffic that would be served by the system proposed by AT&T-SSI.

AT&T has a dominant share of the international traffic originating or terminating in the U.S.[6/]

The Commission staff requested additional comments on this second argument. TLD will confine its Supplemental Comments to this second argument although the first argument also requires denial of the AT&T-SSI Application to operate the proposed cable system on a private carrier basis.

II. AT&T-SSI WILL BE ABLE TO FAVOR ITS REGULATED CARRIERS

AT&T-SSI will clearly be able to benefit from its dominant position in the cable construction market and in the international telephone market by either (a) charging its affiliated common carriers a lower price than competitors like TLD; or (b) charging a monopoly price to all carriers, including affiliated AT&T carriers. AT&T Corp. would have substantial consolidated profits even if AT&T-SSI charged the same monopoly price to affiliated AT&T carriers.

The only representation that AT&T-SSI has made in this proceeding, to attempt to minimize its potential anti-competitive conduct, is that it will sell bulk capacity to all common carriers on "non-discriminatory terms."[7/] However, this platitude is hardly sufficient to guarantee that AT&T will not be able to take unfair advantage of its dominant position in the cable construction and international telephone markets.

6/ TLD Petition to Deny at 7-8; TLD Reply at 5-8.

7/ AT&T-SSI Opp. at 5.

If the pending Application were granted, there would be no requirement for AT&T-SSI to publish the terms of its contract with its affiliated regulatory carriers so that competitors could be sure that they received the same terms. Indeed, if TLD were to accept the "offer" of capacity on the proposed cable system on the terms proposed by AT&T-SSI the business day before the Status Conference, then there would be nothing to stop AT&T-SSI from offering capacity to its affiliated regulated carriers at a lower price in the future.[8/]

Even if the Commission were to require that AT&T-SSI provide the same terms and conditions to TLD and other competitors as to AT&T regulated carriers, then AT&T could still gain an unfair competitive advantage over its competitors. As TLD pointed out in its Reply Comments,[9/] AT&T's affiliated carriers will undoubtedly purchase the largest volume of capacity in the proposed cable system because of its dominant share of international traffic.[10/] AT&T-SSI could favor its affiliated AT&T carriers by providing a significant volume-senstitive price reduction. For example, AT&T-SSI could sell its affiliated AT&T carrier 10,000 circuits for **$10,000** per circuit. However, if TLD wanted to purchase only 1,000 circuits, AT&T-SSI might charge a price

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8/ TLD does not intend to accept the offer of AT&T-SSI. The AT&T-SSI quote was considerably more than TLD would invest to participate in the proposed cable system on an ownership basis.

9/ TLD Reply at 6.

10/ For example, in the last major international cables systems to land at the St. Thomas station, the AMERICAS-1 and COLUMBUS II cable systems, AT&T owned approximately 25% of these systems. By contrast, the second largest share of any other U.S. carrier was approximately 7.5%, held by MCI. TLD owned approximately 1.5%. See COLUMBUS II, 8 FCC Rcd. 5263, 5268 (Appendix A) (1993); AMERICAS-1, 8 FCC Rcd. 5287, 5291 (Appendix A) (1993).

of $12,000 per circuit. AT&T might claim that it was not discriminating against competing carriers with this volume discount.

Similarly, AT&T-SSI could discriminate against relatively small common carriers by making the minimum capacity available larger than these carriers could effectively utilize. Indeed, this is essentially what AT&T-SSI has done with its "offer" to TLD.

Even if the Commission required AT&T-SSI to charge the same per unit price to affiliated AT&T carriers as it charged non-affiliated carriers, AT&T could still obtain an advantage by charging a monopoly price to all customers. While AT&T's affiliated regulated carriers would still have to pay this monopoly price, they would merely be making an interaffiliate transfer payment to AT&T-SSI.

AT&T-SSI will be able to charge a monopoly price because the proposed cable system would be the only facility in the U.S. Virgin Islands that could interconnect future trans-Atlantic international cables. It would be extremely unlikely for a competitor to build another cable station in the U.S. Virgin Islands, or for future trans-Atlantic international cables to land elsewhere in the Caribbean, since AT&T's affiliated carriers would be able to use their dominant position in the international telephone market to steer future trans-Atlantic international cables to the proposed St. Croix cable station. Indeed, it is the virtual assurance that future trans-Atlantic international cables would use the proposed cable system which provides AT&T-SSI with the necessary financial "guarantee" to be able to construct a cable system even though there are no current international cables ready to land at the proposed St. Croix cable station.

As shown in the Pro Formas in Tables 1 and 2, AT&T Corp. would have substantially greater consolidated corporate profits if AT&T-SSI charges a monopoly price to all customers, including AT&T affiliated carriers, than if AT&T-SSI charges only a fair market price. The calculations in both Pro Formas assume that (1) AT&T-SSI's costs would be $9,000 per unit; (2) the fair market price would be $10,000 per unit; (3) the monopoly price would be $12,000 per unit; (4) AT&T affiliated carriers would purchase 10,000 unit; and (5) all other carriers would purchase a combined total of 30,000 unit. The first Pro Forma (Table 1) illustrates that, using these assumptions, if AT&T-SSI charges the fair market price of $10,000 per unit, then the consolidated AT&T Corp. profit would be $30,000,000.

REGULATED CARRIER	UNIT COST	UNIT PRICE	UNIT VOLUME	[illegible]	[illegible] PROFIT (LOSS)	AT&T CORP. CONSOLIDATED PROFIT (LOSS)
AT&T	$ 9,000	$10,000	10,000	($10,000,000)	$10,000,000	0
Other Carriers	$ 9,000	$10,000	30,000	0	$30,000,000	$30,000,000
TOTALS			40,000	($10,000,000)	$40,000,000	$30,000,000

However, since the proposed St. Thomas-St. Croix cable system would be the only system available to land international cables in the U.S. Virgin Islands, and since AT&T's dominance of international telephone traffic would allow it to steer future international cables to this facility, AT&T-SSI would be able to charge a monopoly price for the proposed cable. The second Pro Forma (Table 2) establishes that if AT&T-SSI

charges the monopoly price of $12,000 per unit to all customers, including its affiliated carriers, the AT&T Corp. consolidated profits would be $90,000,000.

REGULATED CARRIER	[illegible] COST	[illegible] PRICE	[illegible]	[illegible]	[illegible]	[illegible] PROFITS
AT&T	$ 9,000	$12,000	10,000	($30,000,000)	$30,000,000	0
Other Carriers	$ 9,000	$12,000	30,000	0	$90,000,000	$90,000,000
TOTALS			40,000	($30,000,000)	$120,000,000	$90,000,000

Obviously, different assumptions would change the amount of AT&T Corp. consolidated profits in the Pro Formas. However, AT&T Corp.'s consolidated profits would always be maximized by charging a higher monopoly price, rather than a fair market price, to all customers (including AT&T affiliated carriers). Therefore, to prevent AT&T Corp. from taking advantage of its dominant positions in the cable construction and international telephone markets, the Commission should require AT&T-SSI to build the proposed system on a common carrier basis.

III. CONCLUSION

The Commission should deny AT&T-SSI's Application to build the proposed St. Thomas-St. Croix cable system on a private carrier basis because: (1) there is no substitute common carrier facility available to land international cables in the U.S. Virgin Islands; and (2) AT&T would get an unfair advantage over its

competitors by virtue of its dominant positions in the cable construction and international telephone markets. The Commission has never permitted AT&T-SSI to land and operate a cable on a private capacity basis before, much less one in which AT&T's regulated carriers would compete with other carriers. There is no basis for departing from the Commission's established practices here.

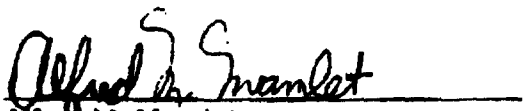
It is quite telling that, as their representatives conceded at the Status Conference, AT&T has never attempted to engage in joint planning or any other activities to determine if non-AT&T common carriers -- such as TLD, VITELCO and others -- would be willing to invest in the proposed cable system on a common carrier ownership basis. TLD and VITELCO have both indicated a strong willingness to invest in the proposed cable system on an ownership basis along with AT&T. The only possible conclusion from AT&T's refusal to even attempt to construct the cable on a common carrier ownership basis is that AT&T intends to use its dominant position in the

construction and international telephone markets to take unfair advantage of its competitors by owning and operating the proposed system on a private basis.

Dated: January 6, 1995

Respectfully submitted,

TELEFÓNICA LARGA DISTANCIA DE PUERTO RICO, INC.



Alfred M. Mamlet
Philip L. Malet
STEPTOE & JOHNSON
1330 Connecticut Ave., N.W.
Washington, DC 20036
(202) 429-3000

Counsel for Telefónica Larga Distancia de Puerto Rico, Inc.

Of Counsel:

Encarnita Catalán-Marchán
Maria Pizarro-Figueroa
Telefónica Larga Distancia de Puerto Rico, Inc.
Metro Office Park
Building No. 8, Street No. 1
Guaynabo, PR 00922